

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

JPMORGAN CHASE BANK NATIONAL
ASSOCIATION, SUCCESSOR BY
MERGER TO CHASE HOME FINANCE,
LLC,

Plaintiff,

v.

DAVID RENFRO and DOES 1 to 6,
Defendants.

Case No. 5:15-cv-01730 HRL

**ORDER THAT CASE BE REASSIGNED
TO A DISTRICT JUDGE**

**ORDER GRANTING IFP
APPLICATION**

**REPORT AND RECOMMENDATION
RE REMAND TO STATE COURT**

David Renfro removed this unlawful detainer action from the Santa Cruz County Superior Court. He also seeks leave to proceed in forma pauperis (IFP). For the reasons stated below, the undersigned grants the IFP application, but nonetheless recommends that this matter be remanded to state court for lack of federal subject matter jurisdiction.

A court may authorize the commencement of a civil action in forma pauperis (“IFP”) if the court is satisfied that the applicant cannot pay the requisite filing fees. 28 U.S.C § 1915(a)(1). In evaluating such an application, the court should “gran[t] or den[y] IFP status based on the applicant’s financial resources alone and then independently determin[e] whether to dismiss the complaint on the grounds that it is frivolous.” Franklin v. Murphy, 745 F.2d 1221, 1226-27 n.5 (9th Cir. 1984). A court may dismiss a case filed without the payment of the filing fee whenever it determines that the action “(i) is frivolous or malicious; (ii) fails to state a claim on which relief

1 may be granted; or (iii) seeks monetary relief against a defendant who is immune from such
2 relief.” 28 U.S.C. § 1915(e)(2)(B)(i)-(iii). Renfro qualifies financially for IFP status, and his IFP
3 application therefore is granted. Even so, he may not proceed in this court because there is no
4 federal subject matter jurisdiction over this matter.

5 Removal to federal court is proper where the federal court would have original subject
6 matter jurisdiction over the complaint. 28 U.S.C. § 1441. The removal statutes are strictly
7 construed against removal and place the burden on the defendant to demonstrate that removal is
8 proper. Moore-Thomas v. Alaska Airlines, Inc., 553 F.3d 1241, 1244 (9th Cir. 2009) (citing Gaus
9 v. Miles, Inc., 980 F.2d 564, 566 (9th Cir. 1992)). Additionally, the court has a continuing duty to
10 determine whether it has subject matter jurisdiction. Fed. R. Civ. P. 12(h). A case must be
11 remanded to the state court if it appears at any time before final judgment that the court lacks
12 subject matter jurisdiction. 28 U.S.C. § 1447(c).

13 Renfro fails to show that removal is proper based on any federal law. Federal courts have
14 original jurisdiction over civil actions “arising under the Constitution, laws, or treaties of the
15 United States.” 28 U.S.C. § 1331. A claim “arises under” federal law if, based on the “well-
16 pleaded complaint rule,” the plaintiff alleges a federal claim for relief. Vaden v. Discovery Bank,
17 129 S. Ct. 1262, 1272 (2009). Defenses and counterclaims asserting a federal question do not
18 satisfy this requirement. Id. In his removal notice, Renfro says that *he* “seeks remedies under
19 Americans with Disabilities Act of 1990 (‘ADA’) title 42 U.S.C. Section 12101, et seq.” in
20 connection with plaintiff’s unlawful detainer action. (Dkt. 1, Notice of Removal at 2). However,
21 allegations in a removal notice or in a response to the complaint cannot provide this court with
22 federal question jurisdiction. Plaintiff’s complaint presents a claim arising only under state law. It
23 does not allege any federal claims whatsoever.

24 Nor does this court find any basis for diversity jurisdiction. Federal district courts have
25 jurisdiction over civil actions in which the matter in controversy exceeds the sum or value of
26 \$75,000 (exclusive of interest and costs) and is between citizens of different states. 28 U.S.C.
27 §1332. Renfro fails to identify the citizenship of each party, although he has checked boxes on the

civil cover sheet indicating that the parties are citizens of different states. (Dkt. 2 at Section III). But, this is of no import because the complaint indicates that the amount in controversy does not exceed \$10,000. Moreover, unlawful detainer actions involve the right to possession alone, not title to the property. So, the fact that the subject property may be worth more than \$75,000 is irrelevant. MOAB Investment Group, LLC v. Moreno, No. C14-0092EMC, 2014 WL 523092 at *1 (N.D. Cal., Feb. 6, 2014); Maxwell Real Estate Investment LLC v. Bracho, No. C12-02774RMW, 2012 WL 2906762 at *1 (N.D. Cal., July 13, 2012).

There being no basis for federal jurisdiction over plaintiff's unlawful detainer action, the removal of this case was improper. Renfro is advised that future attempts to remove this matter may result in sanctions.

Because the parties have yet to consent to the undersigned's jurisdiction, this court ORDERS the Clerk of the Court to reassign this case to a District Judge. The undersigned further RECOMMENDS that the newly assigned judge remand the case to the Santa Cruz County Superior Court. Any party may serve and file objections to this Report and Recommendation within fourteen days after being served. Fed. R. Civ. P. 72.

Dated: April 17, 2015



HOWARD R. LLOYD
UNITED STATES MAGISTRATE JUDGE

United States District Court
Northern District of California

1 5:15-cv-01730-HRL Notice has been electronically mailed to:

2 Donald Charles Schwartz trialaw@cruzio.com
3

4 5:14-cv-04586-HRL A courtesy copy of this order sent by U.S. Mail to:
5

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